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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/815,944

04/02/2004

Thomas E. Ricciardelli

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1609 7590 06/05/2008

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EXAMINER

THOMPSON, CAMIE S

ART UNIT

PAPER NUMBER

1794

MAIL DATE

DELIVERY MODE

06/05/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/815,944	Applicant(s) RICCIARDELLI ET AL.	
	Examiner Camie S. Thompson	Art Unit 1794	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on Amendment filed February 22, 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 34-58 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 34-58 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. Applicant's amendment and accompanying filed February 22, 2008 are acknowledged.
2. Examiner acknowledges amended claims 34 and 47.
3. Please note that claim 49 has an incorrect status identifier. In the present amendment, claim 49 is listed as new. Claim 49 was presented previously.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 34-48 are rejected under 35 U.S.C. 102(b) as being anticipated by Desai et al., U.S. Pre Grant Publication 2002/0025414.

Desai discloses a material that contains up to 100% recycled material (see paragraph 0006).

Additionally, the reference discloses that the recycled material contains at least one type of thermoplastic material and that the recycled material is obtained from post-consumer products such as waste carpet (see paragraph 0024). Paragraph 0025 of the reference discloses that the backing material is a thermoplastic material and can be polyvinyl chloride and have polyethylen. Desai also discloses that an alkyl phthalate plasticizer (Santicizer Registered™ 160) is present in the matrix/backing material (see paragraph 0026). It is disclosed in paragraph 0032 that the waste carpet is cut up to form pieces with a length of 1/4" to 1/2". Also, it is disclosed in paragraph 0035 that the recycled matrix also comprises face fibers such a polyester

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fibers dispersed therein. Paragraph 0036 of the Desai reference discloses that the recycled material can be used in any combination with virgin thermoplastic material such as from about 1% weight recycled material to about 100% recycled material alone with about 0% virgin material to about 100% virgin material. Claims 34 and 47 are product-by-process claims. Even though product-by-process are limited by and defined by the process, determination of patentability is based on the product itself. The patentability of a product does not depend on its method of production. If the product in the product-by-process claim is the same as or obvious from a product of the prior art, the product is not patentable even though the product was made by a different process. The manner in which the continuous phase is formed is not given any patentable weight.

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 49-48 are rejected under 35 U.S.C. 103(a) as being unpatentable over Desai et al., U.S. Pre Grant Publication 2002/0025414 in view of Young et al., U.S. Patent Number 5,895,071.

Desai discloses a material that contains up to 100% recycled material (see paragraph 0006). Additionally, the reference discloses that the recycled material contains at least one type of thermoplastic material and that the recycled material is obtained from post-consumer products such as waste carpet (see paragraph 0024). Paragraph 0025 of the reference discloses that the

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backing material is a thermoplastic material and can be polyvinyl chloride and have polyethylene. Desai also discloses that an alkyl phthalate plasticizer (Santicizer RegisteredTM 160) is present in the matrix/backing material (see paragraph 0026). It is disclosed in paragraph 0032 that the waste carpet is cut up to form pieces with a length of 1/4" to 1/2". Also, it is disclosed in paragraph 0035 that the recycled matrix also comprises face fibers such as polyester fibers dispersed therein. Paragraph 0036 of the Desai reference discloses that the recycled material can be used in any combination with virgin thermoplastic material such as from about 1% weight recycled material to about 100% recycled material alone with about 0% virgin material to about 100% virgin material. Desai does not disclose that the waste carpeting is fed into an extruder. Young discloses a polymeric blend formed from recycle carpet scrap. It is disclosed in Young that the waste carpet scrap can be fed into an extruder and heated to about 204 degrees in order to melt the carpet blend into a polymeric material. Therefore, it would have been obvious to one of ordinary skill in the art have the Desai reference feed the waste scrap carpet and the second polymer into an extruder and heat the resulting mixture in order to have a polymeric material that is free from thermal degradation. Claim 47 is product-by-process claims. Even though product-by-process are limited by and defined by the process, determination of patentability is based on the product itself. The patentability of a product does not depend on its method of production. If the product in the product-by-process claim is the same as or obvious from a product of the prior art, the product is not patentable even though the product was made by a different process. The manner in which the continuous phase is formed is not given any patentable weight.

Response to Arguments

8. Applicant's arguments filed February 22, 2008 have been fully considered but they are not persuasive. Applicant has amended claims 34 and 47 to recite the manner in which the continuous phase is formed. The manner in which the continuous phase is formed is a process limitation in a product claim. The process limitation in the product claim is not given any patentable weight. Paragraph 0038 of the reference discloses that the backing layer forms a continuous layer. Also, the reference discloses **at least one thermoplastic polymer** (which can include two thermoplastic polymers). The rejection is maintained.

9. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communication from the examiner should be directed to Camie S. Thompson whose telephone number is (571) 272-1530. The

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examiner can normally be reached on Monday through Friday from 7:30 am to 4:00 pm. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris, can be reached at (571) 272-1478. The fax phone number for the Group is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Bruce H Hess/

Primary Examiner, Art Unit 1794